

## Para 201-You & the Law

### Chapter 9-Consumer Law & Contracts

Monday- 10/19/09 & Wednesday-10/21/09

- I. Contract: voluntary promises between competent parties to do or to not do something which the law will enforce
  - A. Who? How? What? How much? How Many? When?: provisions or terms
  - B. Consideration: exchange of something of value between parties (usually \$\$)
  - C. Subject of K must not be illegal
  - D. Who may enter contract?:
    - (1) mature person: age of majority by state law (usually 18)
    - (2) mental capacity: capacity to understand what you are doing & consequences  
i.e. drunk may be able to cancel K
  - E. Contracts may be oral or written
    - (1) see material on agreements entered into on computers-p. 4-“click boxes”
    - (2) all states have laws regarding electronic commerce & some have adopted the Uniform Electronic Transactions Act
    - (3) State “statute of frauds” laws: require certain Ks to be in writing
      - (a) guaranty or surety: promise to pay someone’s debt
      - (b) promise to marry (only in some states)
      - (c) promise which can’t be fulfilled within one year
      - (d) promise involving sale/purchase of real estate
      - (e) promise for sale of goods worth more than \$500 or lease of goods worth more than \$1000
      - (f) promise to bequeath property at death
      - (g) promise to sell stocks or bonds
  - F. K’s must be signed
    - (1) many states permit e-mail from an account to be regarded as “signed”
    - (2) certain documents exempted from electronic signature law: wills, trusts, adoptions, divorces, notices of foreclosure or eviction, cancellation of life or health insurance
    - (3) some contracts may need to be notarized
  - G. Offer: communication by offeror of intent to enter a contract: to be valid must cover:
    - (1) identity of offeree
    - (2) subject matter of offer
    - (3) quantity
    - (4) price

\*\* ads are not offers: more like an invitation to bargain

\*\* offer ends: deadline ends; offeror cancels offer; offeree rejects offer; offeree dies or is incapacitated; subject matter of K is destroyed; change in law makes it illegal

\*\* option K: an agreement to keep an offer open for a certain period
  - H. Acceptance of offer: offeree’s voluntary, communicated agreement to terms & conditions of offer
    - (1) contract is in effect now
    - (2) “meeting of the minds”: offeree accepts material terms of K
    - (3) condition is an event that has to occur if K is to be performed (i.e. acceptable home inspection report in house sale)

I. Consideration:

- no set amount
- anything of value
- can renegotiate
- promissory reliance: the other party does something he wouldn't have done or fails to do something he would have done in reliance on your promise

J. Agency: someone else makes a contract on your behalf

i.e. car salesperson is agent for car dealership (principal)

i.e. real estate brokers are your agents when you sell your home

\*\* even if agent exceeds authority, principal may be bound but not always

II. Contract or Not?

A. Contract to do or sell something illegal is unenforceable and void: defense of illegality

--violates public policy

B. Contract that is legal when made will not become illegal by passage of law unless it involves compelling public policy

C. Contract entered into under duress (threat or act that overcomes one's free will) is not enforceable; could be economic duress, i.e. supplier of necessary material threatens not to deliver it

D. Contract entered into under undue influence may be void: someone takes advantage of position of trust or other party's illness, age, or emotional vulnerability

i.e. court-appointed guardian persuades 12-yr-old charge to lend him \$25,000 from his trust fund at no interest

E. Contract can be canceled because of fraud- one party made a material misrepresentation that the other party relied on to his disadvantage

F. Defense of "mistake" is usually not allowed assuming other party didn't know your mistake but mistake defense commonly permitted when honest error in calculations that makes K unconscionable (unfairly burdensome)

G. Mutual mistake: court will hold there hasn't been a "meeting of the minds"

i.e. X sold Y an infertile cow for \$80. Turned out cow was pregnant and worth \$800. Court ruled that K could be set aside based on mutual mistake

H. Statutes of limitations: laws setting time limits during which a lawsuit can be brought: for K actions, usually 6 years from breach

I. Contract won't be enforced when there is "impossibility of performance": i.e. you hire a painter to paint your house on Friday but it burns down on Wednesday

--if product becomes unavailable due to an act of God (tornado, blizzard) courts won't enforce it  
-- courts will look at whether the circumstances could have been foreseen (i.e. fighting breaks out in the Middle East and affects oil prices)

J. Unconscionable K's: courts will set aside: i.e. \$10,000 of rumba lessons sold to 95 year-old widow living on Social Security

\*\* Watch processed/printed K forms: fill in blanks of K; failure to read fine print is never a valid legal defense

### III. Getting Out of a Contract:

#### A. Contract defenses:

- (1) illegality
- (2) duress
- (3) undue influence
- (4) fraud
- (5) mistake
- (6) unconscionability
- (7) impossibility of performance
- (8) frustration of purpose

### IV. Rider: reflects addition or amendment to K

--fine print: many states have passed "plain English" laws requiring consumer K's to use nontechnical easy-to-understand words

### V. Get any oral promises incorporated into written contract

- beware of any Web-based agreement that doesn't permit you to print out, download, or cut & paste a copy of the text you are agreeing to
- license agreement: making illegal copies of software is criminal offense

### VI. Contracts of Adhesion: K's that give you little or no bargaining power: loan documents, insurance K's, car leases

--courts usually interpret disputes in terms/language in way most favorable to consumer

### VII. Special Types of Contracts:

#### A. Leases or Surety Contracts:

- (1) Lease: lets you use something for a specified period for a specified fee: real estate or personal property leases
- (2) Surety K: agreement where one party (surety) accepts responsibility for someone else's contractual obligation, i.e. you agree to pay your son's loan if he doesn't (co-signer)

#### B. Warranties: may deal with quality of goods; may deal with good title or ownership of goods

- (1) federal Magnuson-Moss Act: covers written warranties for consumer goods and requires warranties to be in plain language and include certain items: see p. 24 of material
- (2) full warranty: promise that product will be repaired or replaced free during warranty period
- (3) limited warranty: usually covers only parts, not labor
- (4) express warranties: any promises to back up the product: written or oral
- (5) implied warranties: not expressly stated but automatic in certain transactions:

- a. implied warranty of merchantability: item is adequate for the purpose for which it is purchased or leased (applies to those in the business of selling or leasing certain product)
  - b. implied warranty of fitness for particular purpose: any seller guarantees the product is fit for the purpose buyer is getting it for
- (6) Read & compare warranties before you buy or lease
  - (7) If product is sold “as is”, that’s a disclaimer of warranties
  - (8) Check out extended warranties/service K’s carefully: they are major source of profit for seller
  - (9) Keep your receipts through warranty period & keep copies of all contacts with manufacturer

### VIII. Advertising

- A. False advertising: misleads about a product’s place of origin, nature, quality, or maker
  - this is considered a method of unfair competition & forbidden under federal law & most state laws
- B. Ads have to be accurate about material aspects of the product
- C. Pyramid schemes: promise unrealistic returns and may be violations of postal regulations and securities laws: contact U.S. Postal Service Inspector General or your state’s attorney general
- D. Bait & Switch: bait is ad luring you with promise of an unbeatable deal or product; switch is when salesperson tells you product isn’t available but more expensive model is
  - illegal in most states if advertised product was never available in reasonable quantities
- E. Door-to-Door Sales: federal law now requires a 3-day “cooling-off” period : you can cancel for any reason
  - if you do buy, federal & state laws require salesperson to provide you with certain info including the cooling-off period rights
  - if you cancel during cooling off period, salesperson must refund your \$\$, return any trade-in, & has 10 business days to do so; if salesperson waits longer than 20 calendar days, you may be allowed to keep the goods for free
- F. Mail-Order Purchases
  - under federal law, goods must be in the mail within 30 days of your order or company must inform you of delay & expected delivery date
  - if company sends you substitute goods, you don’t have to accept them
  - unordered goods: you are under no obligation to pay & should consider it a free gift; if the company later tries to bill you, it may be mail fraud
- G. Catalog Purchases: payment by credit card recommended; use established merchants
- H. On-Line Shopping: avoid buying luxury goods over Internet
- I. Time-Shares: usually in vacation/resort property: you are locked-in for certain time periods;
  - you are responsible for increases in taxes, maintenance, repairs
  - break-even period may not come for 10 to 20 years
  - hard to unload, except at a loss

J. Pets: states have laws covering; written agreements; small claims court

K. Home & Home Appliance Repairs & Improvements

- (1) FTC & federal truth-in-lending laws govern this area
- (2) be aware of tricks: see p. 32
- (3) get written estimates; check contractor's track record; don't pay in full in advance; don't sign completion certificate until job is done to your satisfaction
- (4) see terms & contract details on p. 32

\*\* see page 33 for top 10 consumer problems from N.J.'s Office of Consumer Protection and check your state's government web-site for attorney general

\*\* see other scams on pp. 33 & 34

L. Buying Clubs: CD/music/books

--you get initial product at nominal price but monthly offers are at higher than retail prices

M. Funeral Homes

- (1) Funeral Rule: FTC rule which requires that funeral homes give you prices & other info over the phone
- (2) funeral homes must give you written list with all prices & services offered, including the least expensive; embalming options

N. Travel

- (1) reserve hotel rooms with credit card
- (2) airline bumping: federal regulations require airlines give you written statement describing your rights and explaining how airline decides who gets on overbooked flights & who doesn't  
---may be entitled to payment : see material for \$\$ amounts and see web-sites on p. 36 regarding airlines & your rights
- (3) charter tours: best to pay by credit card & get protection of Fair Credit Billing Act  
--get trip insurance to cover if you have to cancel due to illness or family emergency

IX. Breach of Contract & Remedies

A. Breach of K: one party's failure, without a legally valid excuse, to live up to K

- (1) failure to perform: party doesn't perform material part of K by reasonable time or stated deadline
- (2) making performance of K impossible: i.e. locking out your cleaning crew
- (3) repudiation of K: clear statement by one party that he/she will not perform K

B. Remedies:

- (1) Ask breaching party to reconsider: cheap; could renegotiate; keep copies & document all contacts
- (2) if K is with merchant, contact state or federal consumer protection agencies
- (3) alternative dispute resolution: mediation or arbitration
- (4) stopping payment on check: diminishes chances of settlement; bank will charge fee
- (5) under Fair Credit Billing Act, you can refuse to accept delivery, withhold payment

- (6) sue for breach of contract: compensatory damages- $\$$ ; nominal damages; liquidated damages (amount is built into K); consequential damages (rarely available in K suits); punitive damages (usually not for K suit but available for fraud suits)
- (7) suing for specific performance: court orders breaching party to perform K; usually only if contract is for unique personal property or real estate

#### X. Lawsuits as Remedies

- A. Court may rescind (cancel) contract: may order breaching party to pay expenses incurred or order return of goods sold
- B. Court may reform/rewrite K to reflect what parties actually intended
- C. Consumer protection/ consumer fraud laws often provide treble (triple) damages where violation
- D. Successors in Interest: new company must take responsibility for K obligations of old company --however, if company went bankrupt, it could disavow contracts & you would have to submit claim along with other creditors in Bankruptcy Court

\*\* See web-sites on p. 43 regarding consumer protection: great info and links